

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 15,793
)	
Appeal of)	

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare refusing to reimburse her under Medicaid for nursing home expenses she incurred while her application for Medicaid was pending. The issue is whether the Department gave the petitioner false or incomplete information that led her to spend her resources on items other than her nursing home expenses. The following facts are not in dispute.

FINDINGS OF FACT

1. The petitioner is an elderly woman who entered a nursing home in August, 1997, where she has resided ever since.

2. Upon the petitioner's admission, the petitioner's daughter was advised by a representative of the nursing home to apply for Medicaid. The nursing home told her that it would handle the necessary paperwork. The nursing home discussed with the daughter that Medicaid would cover the petitioner's expenses in the home over and above the "patient's share", which would be determined according to the petitioner's income. The daughter maintains that the nursing home did not tell her that the patient share would

be applied retroactively to the date of the petitioner's eligibility for Medicaid if the petitioner were eventually found eligible.

3. The daughter did not have any direct contact with the Department until April, 1998, when she called to inquire about the status of her application. The Department informed her that it was in the process of verifying the petitioner's resources.

4. In May, 1998, the Department called the daughter to inform her that the petitioner had \$900 in excess resources, and that she would not be eligible for medicaid unless these were "spent down" on items necessary for the petitioner's care. The worker explained to the daughter that once these resources were spent down, the petitioner could be found eligible for Medicaid retroactive to August, 1997. The subject of the petitioner's income and her "patient share" at the nursing home did not come up. According to the daughter, the nursing home had not billed the petitioner since her admission in August, 1997; but this was unbeknownst to the Department.

5. The daughter promptly spent \$900 of the petitioner's resources on clothes and other personal items for the petitioner. In June, 1998, when the Department verified this, it found the petitioner eligible for Medicaid retroactive to August, 1997.

6. Based on the petitioner's monthly income, her

patient share was determined to be \$732 a month. The nursing home has now billed the petitioner a total of about \$5,000 for the petitioner's patient share from August, 1997, through May, 1998.

7. The petitioner's daughter maintains that the Department should pay this amount to the nursing home because it did not inform her that the patient share would be applied retroactively. In the alternative, the daughter argues that the Department should at least pay \$900 of this amount because if she had known that the petitioner was liable for this amount she could have applied the petitioner's excess resources to this instead of buying personal items for the petitioner that weren't really necessities.

8. It is not clear if or how the petitioner's income that she received between August, 1997, and June, 1998, was spent.

ORDER

The Department's decision is affirmed.

REASONS

Under the Medicaid regulations, residents in a long-term care facility may qualify for Medicaid if their income is insufficient to meet their monthly nursing home expenses. Residents are allowed to retain from their monthly income

an amount necessary for home upkeep and other medical needs.

The remainder of income is considered the "patient's share" of nursing home expenses and is used to offset the Department's payment of Medicaid to the facility. See W.A.M. 9 M415. There is no dispute in this matter that the Department correctly calculated the amount of the petitioner's monthly patient share. The issue is whether the Department is now liable for the retroactive patient share amount from August, 1997, through May, 1998, when the petitioner's application for Medicaid was pending.

The petitioner is, in legal terminology, making an argument that the Department should be estopped from denying payment of her retroactive patient share. The four essential elements of estoppel (relying on Burlington Fire Fighter's Ass'n v. City of Burlington, 149 Vt. 293 (1988) as set forth therein) are: (1) the party to be estopped must know the facts; (2) the party to be estopped must intend that its conduct shall be acted upon or the facts must be such that the party asserting estoppel has a right to believe it is so intended; (3) the party asserting estoppel must be ignorant of the true facts; and (4) the party asserting estoppel must detrimentally rely on the conduct of the party to be estopped. Finally, in matters which affect the public sector, a final question must be answered as to whether the injustice to the petitioner if estoppel is not invoked outweighs any public interest in strictly applying

the coverage limitations.

Putting aside the question of whether the petitioner suffered actual harm by spending her excess resources on personal items instead of applying them to her nursing home bill (i.e., no. 4, supra), it must be concluded that the petitioner does not meet the first and third elements of the above test. First, the Department did not know that the nursing home had not billed the petitioner for her costs during the pendency of the application for Medicaid. The petitioner, through her daughter, had no contact with the Department until April, 1998. At that time the focus of the Department's concern was the petitioner's excess resources.

Perhaps, a hyper-alert caseworker would have also inquired of the petitioner the status of her bill at the nursing home; but under the circumstances it does not appear unreasonable for the Department to have assumed that the petitioner's income during this period was being used to partially pay her nursing home bill, or was being set aside for this purpose.¹

It must also be concluded that the petitioner also fails the third test of estoppel, i.e., that she was ignorant of the true facts. The petitioner's daughter admits that the nursing home handled the application process

¹Indeed, it does not appear that the Department counted the accumulation of this income as a resource to the petitioner. If it had, the petitioner clearly would have been more than \$900 over the resource maximum by May, 1998. As noted above, it is not clear where this money went.

for the petitioner, and that the nursing home was familiar with how patient shares are determined. In spite of this, the nursing home inexplicably did not bill the petitioner during the pendency of the Medicaid application. Any ignorance on the petitioner's part appears to stem more from the petitioner's daughter's lack of communication with the nursing home during the application process than from any failure on the part of the Department.

For the above reasons, the Department should not be held liable for the petitioner's patient share to the nursing home for the months prior to June, 1998.

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